

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAMON SCOTT,

Petitioner,

-against-

MICHAEL CAPRA,

Respondent.

ORDER

23 Civ. 3923 (KMK) (AEK)

THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.¹

Petitioner Damon Scott, who is incarcerated at the Sing Sing Correctional Facility, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking relief from his New York State conviction on two grounds: (1) the trial court wrongfully admitted evidence of the uncharged crime of murder; and (2) the prosecution’s characterization of Petitioner as a “serial killer” was not harmless error. ECF No. 1 (“Petition”). On June 28, 2023, Petitioner filed a “Motion Requesting Stay of Proceedings.” ECF No. 9. Petitioner seeks a stay so that he can exhaust claims of ineffective assistance of trial counsel raised in a motion filed in state court pursuant to Section 440.10 of the New York Criminal Procedure Law, and then amend the Petition to add those claims. *Id.*

The Court ordered Respondent to file a response to the motion for a stay. ECF No. 10. Respondent filed a response, stating that he does not oppose the motion. ECF No. 12.

Accordingly, Petitioner’s motion requesting a stay of these proceedings is GRANTED. Once Petitioner has fully exhausted the claims raised in his § 440.10 motion in the state courts, Petitioner may return to this Court, and the Petition will be deemed amended to add the

¹ The Honorable Kenneth M. Karas referred this matter to the undersigned on May 25, 2023. ECF No. 7.

ineffective assistance of trial counsel claims from the § 440.10 motion. Respondent's time to file his answer to the Petition is therefore stayed.

Petitioner and Respondent are hereby directed to provide a status report regarding the progress of the proceedings in the state courts by no later than January 8, 2024. A schedule for Respondent's response to the Petition as amended, and Petitioner's reply (if any), will be put in place once the additional claims have been exhausted.

The Clerk of Court is respectfully directed mark the motion at ECF No. 9 as GRANTED, and to mail a copy of this order to the *pro se* Petitioner.

Dated: July 7, 2023
White Plains, New York

SO ORDERED.



ANDREW E. KRAUSE
United States Magistrate Judge